

REMARKS

The Office has required that the specification be amended to include appropriate sequence identifiers. The specification is amended herein to include the identifiers pursuant to the present sequence listing. A substitute copy of the specification with sequence identifiers is attached, as well as marked-up copy of the specification. Applicants submit that the requirements of 37 C.F.R. §§ 1.821-825 have been satisfied.

Claims 29, 30, 33, 34, and 36 are amended herein to place parentheses around sequence identifiers. No new matter is submitted herein.

Restriction Requirement

Applicants hereby elect ***with traverse*** the claims of Group II (claims 27, 31-35 and 37), which are drawn to DNA sequences encoding a polypeptide comprising at least one liver stage-specific T-cell epitope of *P. falciparum* Liver Stage Antigen (LSA) from the 5' sequence of LSA.

Applicants submit that any nominal burden placed upon the Examiner to search accordingly to determine the art relevant to Applicants' overall invention is significantly outweighed by the public's interest in not having to obtain and study many separate patents in order to have available all of the issued patent claims covering Applicants' invention. The alternative is to proceed with the filing of multiple applications, each consisting of generally the same disclosure, and each being subjected to essentially the same search, perhaps by different Examiners on different occasions. This process would place an unnecessary burden on both the Patent and Trademark Office and on the Applicants.

As Applicants have elected Group II, Applicants further elect species (A) for DNA sequence, as preceded by SEQ ID NO:2, wherein X1=Ser, X2=Glu, X3=Arg, and X4=Glu (*i.e.*, SEQ ID NO:2 = **SerAspLeuGluGinGluArgArgAlaLysGluLysLeuGinGluGlnGln**) for the purposes of searching only. From within elected Group II, claim 27 is noted by the Office as generic, and it is believed that claims 27, 31-33, 35 and 37 read on the elected species.

The Applicants traverse for at least the following reasons.

First, Applicants respectfully direct the Examiner's attention to MPEP § 803.04, which relates to restriction of claims to nucleotide sequences. This section states that

Polynucleotide molecules defined by their nucleic acid sequence (hereinafter "nucleotide sequences") that encode different proteins are structurally distinct chemical compounds. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of **35 U.S.C. 121**. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to **35 U.S.C. 121** and **37 CFR 1.141 et seq.** Nevertheless, to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Director has decided *sua sponte* to partially waive the requirements of **37 CFR 1.141 et seq.** and permit a reasonable number of such nucleotide sequences to be claimed in a single application. See *Examination of Patent Applications Containing Nucleotide Sequences*, 1192 O.G. 68 (November 19, 1996).

It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction. In addition to the specifically selected sequences, those sequences which are patentably indistinct from the selected sequences will also be examined. Furthermore, nucleotide sequences encoding the same protein are not considered to be independent and distinct inventions and will continue to be examined together.

In view of this position of the Office and from the Commissioner, Applicants respectfully request that the present Restriction Requirement be modified to the extent necessary so that ten independent and distinct nucleotide sequences may be examined in this application.

Applicants have no intention of abandoning any non-elected subject matter and expressly reserve the right to file one or more continuation and/or divisional applications directed to the non-elected subject matter.


Applicants earnestly solicits favorable consideration of the above response and early passage to issue the present application. The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

BUCHANAN INGERSOLL PC

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